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| APPLICATION NO. | FILING DATE                             | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|---|----------------------|---------------------|------------------|
| 09/530,202      | 04/26/2000                              | NORIKO SAKASHITA     | 000466              | 3928             |
| 38834 7.        | 590 11/04/2003                          |                      | EXAMINER            |                  |
|                 | N, HATTORI, DANIEL<br>CTICUT AVENUE, NW | EGWIM, KELECHI CHIDI |                     |                  |
| SUITE 700       | CIICUI AVENUE, NW                       |                      | ART UNIT            | PAPER NUMBER     |
| WASHINGTO       | N, DC 20036                             |                      | 1713                |                  |

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

| Office Action Summary    Dr. Kelecht C. Egwim   |   | ·  |   |   | 600-16                |  |  |  |  |
|---|---|--|---|---|-----------------------|--|--|--|--|
| ## Commonstrated   Dr. Kelechi C. Egwim   1713  | Office Action Summary   |  | Application No.   | Applicant(s)  |                       |  |  |  |  |
| The MAILING DATE of this communication appears on the cover sheet with the correspondence address −  Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  THE MAILING DATE OF THIS COMMUNICATION.  Exhibition of them may be available under the provision of 3 CFR 1 13(6). In no event, however, may a reply be timely filed  Exhibition of the may be available under the provision of 3 CFR 1 13(6). In no event, however, may a reply be timely filed  Exhibition of the reply selected above is less than thirty (30) days, a reply within the addultory minimum of thirty (30) addys, and will agree 3 (6) MONTH's film the maining date of this communication.  False to reply within the soft or exhibited production to reply will. by statute, cause the application to become ARANCONED (35 US. 6, § 133)  and the part of reply is pecified above is less than thirty (30) days, a reply within the affining date of this communication.  False to reply within the soft or exhibited production for reply will, by statute, cause the application to become ARANCONED (35 US. 6, § 133)  Bright of the second part of the communication, even if limely filed, may reduce any search place turns adjustment. See 37 CFR 1.704(a).  Status  1) □ Responsive to communication(s) filed on 10/20/03.  2a) □ This action is FINAL.  2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 1-4 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) 1-4 is/are rejected.  7) □ Claim(s) is/are allowed.  6) □ Claim(s) 1-4 is/are rejected.  7) □ Claim(s) 3-4 is/are rejected.  11) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  11 approved drawing corr   |   |  | 09/530,202  | SAKASHITA ET A  | AL.                   |  |  |  |  |
| The MALING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION.  Extensions of time may be available used for the provision of 37 CFR 1136(s). In no event, however, may a reply be timely filed  Extensions of time may be available used for the provision of 37 CFR 1136(s). In no event, however, may a reply be timely filed  Extensions of time may be available used for the provision of 37 CFR 1136(s). In no event, however, may a reply be timely filed  ### The period for reply reported used for the provision of 37 CFR 1136(s). In no event, however, may a reply be timely filed to the period for reply septiment adouble the making date of this communication.  ### Period for reply is pecified above, the maximum statisticy princing layer and will expend \$(5)\$ (b) MOTH Form the making date of this communication.  ### Period for reply is pecified above, the maximum statisticy princing plan and will expend the principle of the communication.  ### Period for reply is pecified above, the maximum statistics princing date of this communication.  ### Period for reply is pecified above, the maximum statistics principle and the communication.  ### Period for reply is pecified to the communication of the communication.  ### Period for reply is pecified to septiment.  ### Period for reply is pecified for reply is pecified to septiment.  ### Period for reply is pecified for reply is pecified for reply |   |  | Examiner  | Art Unit  |                       |  |  |  |  |
| Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extraosions of time may be available under the provisions of 37 CFR 1.35(a). In no evert, however, may a reply be timely filed  Extraosions of time may be available under the provisions of 37 CFR 1.35(a). In no evert, however, may a reply be timely filed  Extraosions of time may be available under the provisions of 37 CFR 1.35(a). In no evert, however, may a reply be timely filed  Extraosions of time may be available under the provision of 37 CFR 1.35(a). In no evert, however, may a reply be timely filed  If NO period for reply is specified above, the maximum statutory period will apply and will apply and will apply and the provision of the communication. Provision of the communication of the communication of the communication of the communication.  Failus to time you will the east or extraorded provision reply will be statuted to become AlaxAndoxical (Science 1).  Status  1) Separative to communication(s) filed on 10/20/03.  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-4 is/are pending in the application.  4) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) 1-4 is/are rejected.  7) Claim(s) is/are objected to set in the examiner.  Application Papers  9) The specification is objected to the text particular and provided by the Examiner.  Application Papers  9) The proposed drawings are required in reply to his Office action.  11) The proposed drawings are required in reply to his Office action.  12) The oath or declaration is objected to by the Examiner.  13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some *C) None of:  1-1 Certified copies of the prio  |   |  | ,   |   |                       |  |  |  |  |
| THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be autisely under the procession of 37 CPR 1.36(a). In no event, however, may a reply be timely filled after \$IX (6) MXNTHS from the making date of this communication.  If NO period for reply is sacilitied above, the making date of the communication.  If NO period for reply is sacilitied above, the making date of the communication.  Failure to reply which the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office late than throw making date of the communication, even if timely filled, may reduce any counted patient term adjustment. Set 57 CPR 1.70(b).  Status  1) A Responsive to communication(s) filled on 10/20/03.  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-4 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) 1-4 is/are rejected.  7) Claim(s) is/are objected to.  3) Claim(s) 1-4 is/are rejected.  7) Claim(s) is/are objected to by the Examiner.  10) The proposed drawing correction filed on is/are: a) accepted or b) objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) The oath or declaration is objected to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(a) (to a provisional application)  a) The translation of the foreign language provisional application has been received.  15) Aktnowledgment is ma | Period fo   | The MA!LING DATE of this communication app<br>or Reply   | ears on the cover sheet   | with the correspondence ac  | ddress                |  |  |  |  |
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| 1) Notice of References Cited (PTO-892)   |   |  | · •   |   |                       |  |  |  |  |
| 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)   | 2) Notic  |  | 5) Notice   | ew Summary (PTO-413) Paper No<br>of Informal Patent Application (PT                                       |                       |  |  |  |  |

U.S. Patent and Trademark Office PTO-326 (Rev. 04-01) Art Unit: 1713

#### **DETAILED ACTION**

## Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/20/03 has been entered.

#### Claim Rejections - 35 USC § 102/103

- 2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- 3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, 35 U.S.C. 103(a) as being unpatentable over Kishida et al., Tuzuki et al., Matsuba et al. (US' or EP') or GB 1378434 for reasons cited in previous Office actions.

### Response to Arguments

4. Applicant's arguments filed 10/20/03 have been fully considered but they are not persuasive for the same reasons cited in the Final rejection (Paper #19). Applicant's recitation from the *American Heritage Dictionary of the English Language* does not

Application/Control Number: 09/530,202

Art Unit: 1713

Page 3

contradict the Examiner position on the common and contextual meaning of the word "overlap".

5. Regarding the alternative 103 rejection, in the case where the claimed ranges lie inside ranges disclosed by the prior art "a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) . . . (Claim reciting thickness of a protective layer as falling within a range of "50 to 100 Angstroms" considered prima facie obvious in view of prior art reference teaching that "for suitable protection, the thickness of the protective layer should be not less than about 10 nm [i.e., 100 Angstroms]." The court stated that "by stating that suitable protection' is provided if the protective layer is about' 100 Angstroms thick, [the prior art reference] directly teaches the use of a thickness within [applicant's] claimed range.").

"At least 0.24" includes  $\geq$  0.7. Likewise, "at least 0.41" is includes  $\geq$  0.7.

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1713

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (703) 306-5701. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-

0661.

KELECHI C. EGWIM PH.D. PRIMARY EXAMINER

**KCE**